

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE WESTERN DISTRICT OF MICHIGAN  
3                   SOUTHERN DIVISION  
4

5 UNITED STATES OF AMERICA,

6           Plaintiff,

7       v.

CASE NO: 1:14-CR-50

8 BRADLEY MICHAEL ABBRING,

9           Defendant.

10 \_\_\_\_\_/

11                                   \* \* \* \*

12                   SENTENCING HEARING

13                                   \* \* \* \*

14

15       BEFORE: THE HONORABLE PAUL L. MALONEY, CHIEF JUDGE  
16                   United States District Judge  
17                   Kalamazoo, Michigan  
18                   July 18, 2014

17 APPEARANCES:

18 APPEARING ON BEHALF OF THE PLAINTIFF:

19           TESSA K. HESSMILLER  
20           Assistant United States Attorney  
21           P.O. Box 208  
22           Grand Rapids, Michigan 49501-0208

22 APPEARING ON BEHALF OF THE DEFENDANT:

23           GARY M. GABRY  
24           Hettinger & Hettinger, PC  
25           200 Admiral Avenue  
            Portage, Michigan 49002

1

## I N D E X

2 WITNESSES:

Page

3 RAYMOND SOWA - Government Witness

4 Direct Examination by Ms. Hessmiller 15

Cross Examination by Mr. Gabry 19

5 Redirect Examination by Ms. Hessmiller 22

6

TIM KRUITHOFF - Government Witness

7

Direct Examination by Ms. Hessmiller 23

8 Cross Examination by Mr. Gabry 29

9

10

\* \* \* \*

11

12

13

14 Kalamazoo, Michigan

15 July 18, 2014

16 at approximately 9:30 a.m.

17 PROCEEDINGS

18 THE COURT: This is File Number 14-50; The United

19 States of America vs. Bradley Abbring. This matter is before

20 the Court for sentencing.

21 The Court's file reflects that on April 3rd, 2014,

22 the defendant pled guilty before Magistrate Judge Hugh W.

23 Brenneman to the offense of receipt of child pornography,

24 contrary to 18 U.S. Code 2252A(a)(2)(A). The plea was accepted

25 by this Court on April 18, 2014. The Court accepts the plea

1 agreement finding the charges pled to adequately reflect the  
2 seriousness of the actual offense behavior.

3 There are objections to the presentence report  
4 advisory guideline scoring, which the Court will get to  
5 momentarily.

6 The Court has tentatively scored this case under the  
7 advisory guidelines at Offense Level 37, Criminal History  
8 Category I, which would ordinarily result in an advisory  
9 guideline range of 210 to 262 months, however, because the  
10 statutory maximum for this offense is 240 months, the advisory  
11 guideline range is 210 to 240 months.

12 The record should reflect that Assistant United  
13 States Attorney Tessa Hessmiller is here on behalf of the  
14 government. Attorney Gary Gabry is here on behalf of the  
15 defendant. The defendant is present in person.

16 Mr. Gabry, have you had ample opportunity, sir, of  
17 reviewing the presentence report with your client.

18 MR. GABRY: Yes, your Honor, I have.

19 THE COURT: Subject to your objections, which we will  
20 deal with momentarily, do you agree that the advisory guideline  
21 range is 210 to 240 months?

22 MR. GABRY: Yes, your Honor.

23 THE COURT: Thank you.

24 Mr. Abbring, you've had ample opportunity of  
25 reviewing the presentence report with your lawyer?

1 THE DEFENDANT: Yes, I have, your Honor.

2 THE COURT: Are you satisfied with his work and  
3 representation of you?

4 THE DEFENDANT: Yes, I am.

5 THE COURT: Thank you.

6 Miss Hessmiller, do you concur in the scoring?

7 MS. HESSMILLER: Yes, your Honor.

8 THE COURT: Are you moving third level?

9 MS. HESSMILLER: If the Court moves for the  
10 acceptance of responsibility, your Honor.

11 THE COURT: All right. Thank you.

12 The Court will, for the moment, will take that under  
13 advisement. We will deal with the objections.

14 Mr. Gabry, as I understand it, you have two  
15 objections, sir. You may proceed.

16 MR. GABRY: Thank you, your Honor.

17 Your Honor, the Court's had, I believe, certainly has  
18 had an opportunity to look at the written support memorandum  
19 that I filed with the Court. These objections pertain to two  
20 basic areas that deals with the general area of distribution,  
21 and the fact that under the guidelines as scored, there was the  
22 failure to reduce from 22 down to 18 or down to 20, and then  
23 the additional scoring of two levels for the distribution, Sub  
24 F, that there was no other factor of distribution. I believe  
25 in my objection, your Honor, I indicated those are kind of tie

1 barred together, and in examining the caselaw, what I tried to  
2 summarize is that it seems in examining both historical  
3 evolution of the distribution, I guess, offense variable  
4 additions, to the guideline scoring, that we have evolved from  
5 what originally started out as assessments being added because  
6 of in looking-- I'm sure the Court has also had an opportunity  
7 to review the United States Sentencing Commission's report  
8 dated February 27, 2013, it's a huge report, 300-some pages.  
9 In going through different parts of that report and  
10 particularly looking at some of the recommendations made in the  
11 summary, there was an interesting historical discussion about  
12 the use of distribution and distribution being scored in cases  
13 of receipt. That being that distribution was originally  
14 treated much more harshly because the method by which it was  
15 done was generally through the mail, that receipt was being  
16 charged because of the positive outcome of sting operations  
17 done, and individuals were gaining through the mail the  
18 pornographic material, and that it was a much different  
19 technological world. Starting from that point, we have now  
20 expanded into what we know to be peer-to-peer networks.  
21       There is no dispute, and I have not disputed that the  
22 indication is that Mr. Abbring did use a peer-to-peer network,  
23 known as Ares. That he did have his files not on the  
24 pornographic files, from my understanding of the forensic  
25 evaluation, is that the pornographic files were removed from

1 the Ares share folder, the download folder, and were being kept  
2 on this hard drive, this external hard drive. In addition is  
3 to that, we don't object and have indicated that the search  
4 warrant affidavit found that, I believe it was Agent Kruithoff,  
5 downloaded partial files over a period of time, I think on four  
6 different occasions, if my memory serves me correctly. It also  
7 indicates that those downloads were not able to be completed.  
8 No one has necessarily indicated from a forensic standpoint as  
9 to why. Mr. Abbring was pretty up front from the very  
10 beginning when the search warrant was executed that he would  
11 stop these downloads and that he would not keep the  
12 pornography-- the child pornography in his share folder, he  
13 would move it. And that in that frame of mind-- with that  
14 frame of mind, he didn't feel he distributed. Now, I  
15 understand we are talking about legal term of art and at some  
16 point in time that came up for one of the issues acceptance of  
17 responsibility I explained. I think the distinction in my  
18 mind. What we are looking at now, however, is the legal issue,  
19 and I don't dispute the fact that the definition says any act  
20 that leads to the transfer of these types of files can be  
21 scored as distribution. Where my concern arises, your Honor,  
22 is what we have here is actions by the defendant to stop the  
23 distribution. Yes, that's how he received the files. Some  
24 people receive them by writing a check and buying things at a  
25 store behind a counter, some people purchase commercially on

1 the internet, and we have had clients that have been in front  
2 of this Court that have done that before. What has  
3 exponentially grown as far as individuals obtaining these sites  
4 are the fact that they can go on these peer-to-peer networks,  
5 enter certain terms and get downloads. The cases that I have  
6 examined, with the exception of the one cited from the District  
7 Court in Kansas, all in my examination of them, indicate that  
8 these are individuals that got scored for distribution because  
9 they had left these files in their computers, and that I think  
10 the most recent unpublished case I saw out of the Sixth Circuit  
11 talked about the fact that there were 26 files downloaded. I  
12 drew a distinction, on Mr. Abbring's behalf, that when he is  
13 actively trying to stop the distribution, that there should be  
14 some acknowledgment that he is not doing an act to allow the  
15 distribution.

16 In the Ramos case, the judge-- no, it was in the  
17 Bolton case, the Michigan case, Tommy Bolton, I had cited in my  
18 brief, indicated that it was kind of like FaceBook. The  
19 district judge said well, you know, if you don't take certain  
20 steps to protect against it, you put it out there, and yes,  
21 anybody can pick it up, and that's distribution.

22 My contention is that Mr. Abbring's case, to score  
23 him at 22 instead of 20 and then an additional two points for  
24 the distribution, which raises this to actually four levels for  
25 this act to allow the transfer when, in fact, his actions are

1 to deny that opportunity doesn't seem appropriate.

2 I can't cite any caselaw other than the fact that I  
3 have not seen a case that says the mere use of the peer-to-peer  
4 network in and of itself you score the plus two points. Most  
5 of the cases talk about the understanding of the network, and  
6 that if you are going to use that network, these files are  
7 going to be downloaded, they are going to be available to other  
8 people, and if you know that and you do that, you are going to  
9 get the two points. Yes, Mr. Abbring knew that, but he took  
10 actions to stop it from happening. And so it's my contention  
11 he should not receive the plus two points.

12 The second objection, your Honor-- it actually would  
13 go up four levels. No? Yes. Because it would be 22, is the  
14 base, but then the guidelines indicate under specific offense  
15 B-1, let's see, "The defendant did not intend to traffic in or  
16 distribute such material, decrease by two levels." And then  
17 B-5, B-3(b) says, "Distribution other than distribution  
18 described in subdivisions A through E increase by two levels."

19 The other area of concern that I objected to, your  
20 Honor, was the fact that the probation officer has indicated to  
21 the Court that she believes the Court should not grant the  
22 points for acceptance of responsibility. Again, I don't  
23 dispute the issues that are pointed out by the probation  
24 officer with the exception that as to her point four in the  
25 basis for not recommending acceptance of responsibility-- I'm



1 sorry, point two, just bullet two is noted in the first  
2 objection, "Mr. Abbring denies he distributed pornography,  
3 which is relevant conduct in this case." He doesn't deny what  
4 has happened here. He hasn't denied some partial files were  
5 downloaded. He has denied that he's left files so that anybody  
6 could pull them down. And so in wrestling with this, to me,  
7 it's kind of like we are taking him out of civilian being  
8 interviewed who is hearing well, did you distribute these  
9 files? And he doesn't feel that he did, in that terminology.  
10 Back in our day, people used to hear about B & E, well, I  
11 didn't break in, the window was open, I just lifted it. We are  
12 getting into that. He is not denying it, as far as relevant  
13 conduct. I was present at the interview. He said some of the  
14 things that he said. I pointed out--

15 THE COURT: I mean there is a significant aspect of  
16 denial of relevant conduct here, isn't there?

17 MR. GABRY: Well, there is if you are talking about  
18 the masturbation issue, your Honor. That is an area of  
19 dispute. My client does not, has not indicated, even to his  
20 therapist or to me or to the probation officer that he was  
21 doing that to these files. It was reported in the police  
22 report that the officers said that when he was being  
23 questioned, he admitted that. Mr. Abbring indicates he  
24 admitted masturbation. Under the circumstances, he didn't feel  
25 that he was admitting it to child pornography.

1 THE COURT: Well, isn't there also some inconsistent  
2 statements regarding viewing the material itself?

3 MR. GABRY: Not significantly, your Honor. I mean  
4 what he has indicated-- I mean again, what has been said?  
5 Again, going back to the police report, he had indicated to the  
6 officers that he didn't view many-- he did not view a  
7 significant amount of those. The number 20 came up, it's a  
8 smaller number that he has indicated. I've discussed it.

9 There's obviously a large quantity that was on this  
10 hard drive. He has indicated and been consistent from the  
11 beginning that he could not view on his antiquated system many  
12 of the movies that downloaded into a file, he couldn't then  
13 open them up and play them. And that he viewed some of the  
14 images and that it sickened him, and he did not consistently or  
15 go into all of those. So in the area of 20, 30 there was  
16 viewing, but it wasn't viewing, I guess, to the extent of the  
17 number that we have seen. The probation officer did conclude  
18 that she basically didn't believe that, that she did not accept  
19 that he didn't view all of these, and that he was downplaying  
20 that.

21 Submitted in the sentencing memorandum is a report of  
22 a therapist that worked with him. Again, that appears to be  
23 consistent with what Mr. Abbring has indicated. First of all,  
24 the psychological testing does indicate that they believe him  
25 to be a truthful person, that he answers in a truthful way.

1 And when you are trying to, I guess, understand why he has so  
2 many of these videos, why he has so many of these images, then  
3 we blend into parts of his experience that we have outlined.  
4 What happened. The therapists do agree and, in fact, the  
5 United States Sentencing Commission agrees in part, that not  
6 everybody that views child pornography is doing it for  
7 perversion reasons or because they are a pedophile or that they  
8 get aroused by that kind of material. That they do it for  
9 stress, they do it in anxiety situations, and that's quoted in  
10 my sentencing memorandum.

11 We have a situation here in which Mr. Abbring said to  
12 his therapists, and unfortunately to many people, including a  
13 state senator, that he would go on these searches to connect  
14 with these victims, because he viewed himself as a victim, and  
15 that he didn't feel that alone.

16 Now I understand, your Honor, that is not the norm  
17 that we often see. And from the beginning an indication, you  
18 know, in my conversations with Mr. Kruithoff and the U.S.  
19 Attorney, is there any indication that you can show me from the  
20 examination that these files once put on the hard drive were,  
21 in fact, then re-accessed and pulled up and looked at at some  
22 point in time. And again, to my knowledge, I haven't heard  
23 that that's been identified. So in that particular area, I  
24 can't concede that he is in denial of relevant conduct. We  
25 find it difficult to believe that he would not have been

1 viewing more files than he says, but to my knowledge, he  
2 admitted viewing files to the officers. He didn't say I looked  
3 at all of them, he in fact, said that he couldn't open them,  
4 the movies and didn't view the movies.

5 So when we are talking about the issue of denial of  
6 relevant conduct, it would be my contention that he has not  
7 intentionally denied any relevant conduct.

8 The other aspects of the recommendation that the  
9 Court not grant acceptance of responsibility deal,  
10 unfortunately, with the correlation between the reality of what  
11 will happen now that he is being prosecuted and how that is  
12 going to affect his life. And the fact that that was a primary  
13 factor in the early stages of our negotiations and the efforts  
14 made by myself and by the family in a number of areas which  
15 I've, of course, indicated to the prosecutor I didn't  
16 necessarily recommend or would try to rein in the family  
17 members.

18 They are a middle class, never been in trouble  
19 family. And when we initially find out that these matters have  
20 been seized and there isn't any clear indication that it's  
21 going federal for some period of time where there was a  
22 discussion that it was made clear that it was going to be  
23 handled by the federal government and the ramifications of  
24 handling a case under the federal guidelines versus the state  
25 guidelines-- I know the Court's heard it before. So that was

1 an issue. And then when we began to realize that the policy of  
2 the United States Attorney's Office was that they weren't going  
3 to be looking at possession charges anymore. And I certainly  
4 understand Mr. Mekaru's position. I understand why. It's a  
5 little difficult to convey that to a client, that they can't  
6 get that break that had been given to others in the past, but  
7 it is what it is. And so the focus became this kind of, oh my  
8 God, I'm going to prison, and I'm going to go for five years.  
9 No, you could go for much longer than five years. But the  
10 Court has no ability to do anything but at least give that, and  
11 how could that be changed. Well, I have to fall on my sword to  
12 some extent, because I indicated to my client the only people  
13 that could change that would be Congress, the elected  
14 officials. It is the law. It's not the judge's discretion.  
15 The law says five years at least, and unless Congress does  
16 something, unless the politicians do something to change that,  
17 this Court's hands are tied by that. So we get into the  
18 situation where this man is scared, he is afraid of the impact  
19 it's going to have on his family, his wife, his child, and he  
20 reaches out. I did attach the full email. When I was asked  
21 whether I wanted that at the discussion, I hadn't talked to my  
22 client, I hadn't really pondered everything that was in it, and  
23 I've decided to present it to the Court so that the Court can  
24 read it in context. Yes, he is, he wishes that there would  
25 have been more leniency granted to him by the prosecutor's

1 office, but he doesn't feel this prosecutor railroaded him. He  
2 doesn't feel that he is an innocent man that was railroaded.  
3 He feels that the statute railroads people. Is that his--  
4 Does that mean he doesn't accept responsibility? Well, he did  
5 it.

6 He stood up knowing full well that he was looking at  
7 five, if not many more years than that, he did. He has some  
8 difficulty drawing a distinction originally between the fact  
9 that the young ladies and young boys in these images are his  
10 victims also, because as Dr. Flood indicated he relates to the  
11 victims and the act on the victims. Does he believe that they  
12 are his victims? If the Court would like to inquire, and I'm  
13 sure at some point in time I know Mr. Abbring has a statement  
14 that he wishes to read to the Court, the Court will see that he  
15 does, he understands that he is hurting these children. We had  
16 discussions at length. To say that he is not accepting  
17 responsibility, that he is not remorseful, that he is  
18 minimizing his behavior, he is not. And I would hope that the  
19 Court would, in looking at the basis for those objections,  
20 decide after hearing from Mr. Abbring that he should receive  
21 the benefit of the acceptance of responsibility.

22 THE COURT: Thank you, counsel.

23 Miss Hessmiller.

24 MS. HESSMILLER: Your Honor, the government has two  
25 law enforcement witnesses that would be probably five minutes

1 each to address some of these factual issues, with the Court's  
2 permission, I could go ahead and call those two law enforcement  
3 agents.

4 THE COURT: On what issue?

5 MS. HESSMILLER: The first officer, your Honor, would  
6 be Trooper Ray Sowa to talk about the contention that is in the  
7 defense objection memo on Page 10 that states that Mr. Abbring  
8 does not believe that he admitted to law enforcement that he  
9 masturbated to the child pornography.

10 The second proposed witness, your Honor, would be  
11 Special Agent Tim Kruithoff to talk about partial download  
12 issue, and what is going on with why the officers were able to  
13 get partial downloads, which is also a fact that was disputed  
14 in the objection memo.

15 THE COURT: All right. Go ahead and proceed. Call  
16 your first witness.

17 MS. HESSMILLER: Thank you, your Honor.

18 The government calls Michigan State Trooper Ray Sowa.

19 THE COURT: Trooper, please step forward and be  
20 sworn.

21 RAYMOND SOWA - GOVERNMENT WITNESS - SWORN

22 COURT CLERK: State your full name and spell your  
23 last name for the record.

24 THE DEFENDANT: Raymond Sowa, S-o-w-a.

25 DIRECT EXAMINATION

1 BY MS. HESSMILLER:

2 Q. Good morning, Trooper Sowa.

3 A. Good morning.

4 Q. Were you involved in the interview of Mr. Bradley Abbring  
5 at his residence in conjunction with the execution of a search  
6 warrant?

7 A. Yes, I was.

8 Q. Can you tell us what Mr. Abbring said regarding  
9 downloading child pornography?

10 A. He described it as an addiction, claimed that he was--  
11 started looking at child pornography approximately six years  
12 ago. When I asked him about the masturbation, whether he would  
13 masturbate, he confirmed that he did just a couple times.

14 When we were discussing the child pornography as a  
15 whole within the interview, I made it very clear to him  
16 anything that we discussed that day would be relevant to child  
17 pornography, not adult pornography.

18 Q. Is that your standard practice?

19 A. It is.

20 Q. At any point in this interview, did anything-- were you  
21 focusing at all on adult pornography?

22 A. No, ma'am.

23 Q. So at the point where he was talking about downloading  
24 images and movies, was that about adult pornography or child  
25 pornography?



1 A. Child pornography.

2 Q. And you recall masturbation coming up in that interview?

3 A. Yes, I do.

4 Q. And the masturbation would have been about adult

5 pornography or child pornography?

6 A. Child pornography.

7 Q. He said he had been doing this for six years?

8 A. Yes. Yes, ma'am.

9 Q. Did he say he had ever tried to stop?

10 A. He did.

11 Q. What did he say about that?

12 A. I believe he said he quit looking at the child pornography

13 approximately one year, but it was just the easy access got him

14 right back into it.

15 Q. Easy access to the movies?

16 A. Yes, ma'am.

17 Q. Of child pornography?

18 A. Yes, ma'am.

19 Q. So what did you take from him saying that he had been

20 doing this for six years and had stopped for a period of--

21 stopped looking at them for a period of one year?

22 A. I took that as he was addicted to it. I believe that we

23 discussed the addiction as that of a drug addict, except in his

24 case it was the child pornography.

25 Q. Was he talking about being addicted to downloading and

1 saving these images and movies or viewing them?

2 MR. GABRY: I'm going to object, your Honor, unless  
3 there is a foundation laid. I mean it's asking-- If it's  
4 asking the witness what he said, that would be acceptable, I  
5 would not find that objectionable, but I believe the question  
6 was asking for what might be in his state of mind.

7 THE COURT: Let's tighten up the question. Go ahead.

8 MS. HESSMILLER: Thank you, your Honor.

9 BY MS. HESSMILLER:

10 Q. Trooper Sowa, when you were discussing Mr. Abbring's  
11 addiction, what was the conversation? Can you tell us what  
12 that conversation was about? What was he addicted to?

13 A. The downloading of child pornography.

14 Q. Was there any part of that interview where Mr. Abbring  
15 mentioned he had only ever viewed 20 to 30 images?

16 A. I don't recall that.

17 Q. What was Mr. Abbring's demeanor during this interview?

18 A. Very calm, very honest, in my opinion. It appeared to me  
19 the discussion of why we were there and our investigation was  
20 almost a relief to him, that this is finally over.

21 Q. Did he say to you if you were the first person he had ever  
22 talked to about this?

23 A. He did.

24 Q. Was this the first contact by law enforcement of  
25 Mr. Abbring at his home for this investigation?

1 A. I believe it is.

2 MS. HESSMILLER: Thank you, your Honor. Nothing  
3 further.

4 THE COURT: Mr. Gabry.

5 MR. GABRY: Thank you.

6 CROSS EXAMINATION

7 BY MR. GABRY:

8 Q. Trooper, I want to make certain there was no taped  
9 interview of this conversation; is that correct?

10 A. No, sir, there was not.

11 Q. And the police report that was completed by you is the  
12 full summary of that conversation?

13 A. Yes, sir.

14 Q. Okay. And your training as a state trooper, when an  
15 individual has something in quote marks when they are putting  
16 your police report down, talking about what the defendant said  
17 to you, do you also take the tact that when a specific  
18 statement is being made by the defendant you put that in quote  
19 marks?

20 A. Could you-- I guess I'm a little confused on it sounds  
21 like two different questions.

22 Q. Well, I'm looking at your police report, and I see that  
23 there are some times in the report where you say Brad stated,  
24 and you put in quotes, "I do. I would search for movies and  
25 save them on a thumb drive." Unquote. Other parts of the

1 report do not bear any information in quote marks. Is the  
2 intent of placing those quote marks on it because what you are  
3 telling the reader of the report, that's specifically what he  
4 said?

5 A. That's correct.

6 Q. Okay. Is it also true in here that you do never  
7 specifically ask him, did you masturbate to child pornographic  
8 movies?

9 A. I did ask him if he would ever masturbate.

10 Q. While looking at what?

11 A. I can't recall whether I actually said child pornography.

12 Q. If I were to show you your report, would that refresh your  
13 recollection?

14 A. It would.

15 Q. I'm referring to Page 2 of 8 of Trooper Sowa's report.

16 A. Okay.

17 Q. Did you ever specifically ask him the question in your  
18 report: "Did you look and masturbate to child pornographic  
19 movies?"

20 A. Not in the report, sir.

21 Q. Okay. This interview took place in your police van at  
22 about 7:00 o'clock in the morning on the date of the execution  
23 of the search warrant?

24 A. That is correct.

25 Q. A number of police officers came to the house and asked

1 Mr. Abbring to step out; is that correct?

2 A. That is correct.

3 Q. And you interviewed him in that van?

4 A. Yes, sir.

5 Q. Are you indicating to the Court that there was no

6 discussion about adult pornography between yourself and

7 Mr. Abbring?

8 A. The only discussion was that this was not about adult

9 pornography.

10 Q. So you never asked him about whether or not he downloaded

11 adult pornography, or had adult pornography, or masturbated to

12 adult pornography?

13 A. No, sir, not that I recall. No.

14 Q. Okay. What you do recall is that he said out of the six

15 year period, twice. I believe that was your testimony, two

16 times I believe you said on your direct examination; is that

17 correct?

18 A. Could you repeat that, please?

19 Q. Well, first of all, in response to Miss Hessmiller's

20 question, did you indicate that Mr. Abbring told you he

21 masturbated to child pornography either twice or a couple of

22 times?

23 A. I believe a couple of times, yes.

24 Q. So when the indication is about what went on for six

25 years, this was not masturbation, this was the downloading of

1 this pornography?

2 A. Correct.

3 Q. Okay. So out of six year period, he remembered doing it

4 two times?

5 A. Correct.

6 Q. Did you ask him to what kind of pornography, what ages of

7 the children, whether they were bondage type images or anything

8 like that?

9 A. No, sir.

10 Q. Okay.

11 MR. GABRY: Nothing further, your Honor.

12 THE COURT: Thank you.

13 Miss Hessmiller.

14 REDIRECT EXAMINATION

15 BY MS. HESSMILLER:

16 Q. Trooper Sowa, did ages come up in the interview? Did you

17 discuss ages of the child pornography?

18 A. We did.

19 Q. What was the context of that information?

20 A. I asked him his preference of what types of videos he

21 would be searching for. And if I recall right, I believe the

22 ages of 12 to 14 came up.

23 Q. Boys or girls?

24 A. I don't recall.

25 Q. Would it help you remember if I showed you your report?

1 A. Yes, ma'am.

2 Okay. Thank you.

3 Q. Were these 12 to 14 year old boys or girls?

4 A. Girls, ma'am.

5 MS. HESSMILLER: Thank you, your Honor. Nothing  
6 further.

7 THE COURT: Mr. Gabry.

8 MR. GABRY: No, thank you, your Honor.

9 THE COURT: Trooper, you may step down, sir, with the  
10 Court's thanks.

11 THE WITNESS: Thank you, sir.

12 MS. HESSMILLER: Your Honor, the government calls  
13 Special Agent Tim Kruithoff.

14 THE COURT: Agent, please step forward and be sworn.

15 TIM KRUIHOFF - GOVERNMENT WITNESS - SWORN

16 COURT CLERK: Please be seated.

17 State your full name, spelling your last name for the  
18 record.

19 THE WITNESS: My name is Tim Kruithoff, and it's  
20 spelled K-r-u-i-t-h-o-f-f.

21 DIRECT EXAMINATION

22 BY MS. HESSMILLER:

23 Q. Special Agent Kruithoff, what agency do you work for?

24 A. I work for Homeland Security Investigations.

25 Q. Were you involved in the investigation into Bradley

1 Abbring?

2 A. Yes, I was.

3 Q. Were you involved in the undercover download from Bradley

4 Abbring's IP address?

5 A. Yes, I was.

6 Q. When was the first time that you had achieved an

7 undercover download from Bradley Abbring's IP address?

8 A. That occurred in July of 2012.

9 Q. And were there multiple times or was that the only time?

10 A. There were approximately four times.

11 Q. Okay. Do you remember the months of those downloads?

12 A. I believe there was a couple in July of 2012, and I

13 believe September of 2012, and then I think the last one was in

14 June of 2013, I believe.

15 Q. Was there one in February, 2013, as well?

16 A. Yes.

17 Q. And what did you download during those sessions?

18 A. During those sessions, we had partial downloads of child

19 pornography.

20 Q. And let me back up a step.

21 What program were you downloading on?

22 A. I operate-- it's basically a law enforcement undercover

23 program that's based on Ares. It's actually the Ares program

24 that's modified for law enforcement. And then while on the

25 Ares network, we identified an IP address that was sharing



1 child pornography, and that's what occurred.

2 Q. This is Ares, A-R-E-S?

3 A. Yes, that is correct.

4 Q. Is that a peer-to-peer sharing network?

5 A. Yes.

6 Q. You downloaded four times partial downloads, what does  
7 that mean?

8 A. The partial downloads, because when Mr. Abbring was  
9 downloading his child-- the files from the Ares network, it  
10 starts to, you know, it doesn't come all in one shot, it has to  
11 download, you know, the file it takes awhile to download the  
12 file. And then as that file is being created on his computer  
13 then we are also able to-- the Ares program, the law  
14 enforcement Ares program is also able to start to download that  
15 program from him as well. And so what happened as the file  
16 completed on Mr. Abbring's computer, it was then removed out of  
17 the shared folder and then put to the external hard drive, and  
18 then that-- once that action happens, that stops my download,  
19 so I was never able to get a complete download. It was always  
20 partial downloads of the files.

21 Q. Were you able to open those partial downloads?

22 A. Yes, we were.

23 Q. What were you able to open?

24 A. We were able to-- The file that was partially downloaded,  
25 we were able to open that and view what those files contained.

1 Q. Were those videos or images that were partially  
2 downloaded?

3 A. They were videos.

4 Q. So by partial downloads, does that mean only part of the  
5 video was downloaded?

6 A. That is correct, yes.

7 Q. Were you able to view those videos on your undercover  
8 computer?

9 A. Yes, I was.

10 Q. Did you see child pornography in those videos?

11 A. Yes, I did.

12 Q. Can you give us an example of what you saw from  
13 Mr. Abbring's computer?

14 A. I don't recall exactly what the names of the files were,  
15 but from my forensic examination, I can tell you what I kind of  
16 believe what they were, but I don't exactly know what those  
17 files.

18 Q. Would it help you to see the description in the search  
19 warrant affidavit?

20 A. Sure.

21 Q. So for example, can you give us one example of what you  
22 were able to view from one of the partial downloads?

23 A. Yes. One of the partial downloads, the video depicted  
24 three to four-year-old female who was standing in the bathroom  
25 initially touching her vagina and later in that video performs

1 oral sex on an adult male.

2 Q. So by partial download, did that mean that you were just  
3 not able to see the last part of that video?

4 A. That is correct.

5 Q. But you were able to see enough to see that activity that  
6 you just described?

7 A. That is correct, yes.

8 Q. And is that the same for all of the download sessions from  
9 July, 2012 to June, 2013?

10 A. That is correct, yes.

11 Q. Okay. And then ultimately do you recall how many images  
12 and videos the forensic examination discovered on Mr. Abbring's  
13 devices?

14 A. Yes, I do.

15 Q. How many?

16 A. During the forensic examination, the videos, I stopped  
17 book marking the child pornography videos at 450. There were  
18 additional videos, but at that point, at the number like 450, I  
19 stopped book marking.

20 Q. How many images?

21 A. The images I believe there are just under a thousand  
22 images. And again, that was-- I didn't review everything, but  
23 that's kind of where I stopped book marking images.

24 Q. Were the majority of those images boys or girls?

25 A. Females.

1 Q. Were there images of bondage and sadomasochistic conduct?

2 A. Yes, there was.

3 Q. The Ares program, can you tell us a little bit more about

4 how it works, and I'll start with this. If a person is using

5 Ares, are they able to disable the share function?

6 A. No, they are not.

7 Q. Can you tell us why or how?

8 A. Well, the Ares program-- to install the Ares program, you

9 have to go out and search for it, you have to download it,

10 install it on your computer, and then once do you that, you get

11 access to what is called Ares network. And Ares network

12 comprises of other people around the world that are also

13 running the Ares program, and then you can share files. You

14 can type in key words and look, you know, and basically look

15 for whatever you want to look for, and then a list will come up

16 on your computer to tell you, you know, hey, these files are

17 available, and give you names of those files and then you can

18 click on those files to download those files.

19 Q. And if Mr. Abbring was removing files from his share

20 folder right after he downloaded them, is that one way that you

21 can prevent other people from downloading further from you?

22 A. It is, yes.

23 Q. But it doesn't prevent people from downloading what is in

24 your shared folder at that moment?

25 A. No, it dose not.

1 Q. For Ares, if you're using Ares and you're downloading  
2 files, there is no way to stop people from downloading those  
3 files; is that correct?

4 A. That is correct.

5 Q. So unlike other peer-to-peer programs where you can  
6 perhaps disable a share function and still use the program,  
7 that feature does not exist in Ares?

8 A. No, it does not.

9 MS. HESSMILLER: Thank you, your Honor. No further  
10 questions.

11 THE COURT: Mr. Gabry.

12 MR. GABRY: Thank you.

13 CROSS EXAMINATION

14 BY MR. GABRY:

15 Q. So Agent Kruithoff, if I understand your explanation, and  
16 I'm probably terrible at analogies, but basically if I take one  
17 of those cups of water and I start to pour the water into the  
18 cup, before I remove that cup and stop that download, you,  
19 because I am downloading, can start taking water out of the  
20 cup?

21 A. That is correct.

22 Q. And that's, in your estimation, and obviously for the  
23 Court, the term distribution, he is distributing those files  
24 even though he doesn't have complete access to that file yet?

25 A. I'm able to begin the download of that file, yes.

1 Q. Okay. And so are you indicating that he can't block  
2 somebody. If he stops the download, does that block you?

3 A. You can stop the download, but you cannot turn off the  
4 sharing function within Ares. So there is not a setting that  
5 can go in and say hey, do not share files from the share  
6 folder.

7 Q. Right.

8 A. That option is not available.

9 Q. And he never indicated that's what he was doing, he  
10 indicated he was blocking people from downloading?

11 A. I believe that was from the interview, yes.

12 Q. And a way to block somebody is to stop the download when  
13 somebody else-- Can you tell somebody is trying to take the  
14 file when you're downloading it?

15 A. Yes.

16 Q. Okay. And so there is action that can be taken to stop  
17 the download, to stop the person from getting it?

18 A. I believe so, yes.

19 Q. In your forensic examination of the all of the media that  
20 was taken from Mr. Abbring, is it not true that you did not  
21 find any child pornography in the shared Ares folder on his  
22 desktop?

23 A. I did not find any child pornography in the shared folder,  
24 that is correct.

25 Q. It is true that the child pornography that you found, with

1 the exception, I think you mentioned in one of the reports,  
2 there was some images on a phone?

3 A. Yes.

4 Q. But the majority of this, all volume we are talking about  
5 had all been placed on what we have referred to as an external  
6 hard drive?

7 A. External hard drive and other pieces of removable media,  
8 yes.

9 Q. Okay. I don't remember seeing a breakdown that it was on  
10 other pieces of media other than the external hard drive.

11 A. There were thumb drives, SD cards, those types of.

12 Q. And they had child pornography on them?

13 A. Yes, they did.

14 Q. Okay. Did you ever determine whether or not the video  
15 players on the Abbring computer was able to view AVI files or  
16 MPEG files?

17 A. No, I was not.

18 Q. Okay. There was information in this shared Ares folder  
19 when you did your investigation; is that correct?

20 A. Information in the shared folder?

21 Q. Files in the shared folder?

22 A. You know, I don't recall. I don't recall what was in the  
23 shared folder.

24 Q. Would you recall then if it was totally empty? Would you  
25 have not made note of that somewhere?

1 A. I don't recall that either.

2 Q. Okay. Do you recall meeting with me?

3 A. I do, yes.

4 Q. Okay. And you recall showing me various aspects of what  
5 you found and going through the files and things of that  
6 nature?

7 A. Yes, I do.

8 Q. Okay. Now again, I'm not talking the legal term of art,  
9 I'm talking about our conversation. Did you not indicate to me  
10 that there was no evidence of distribution and that was good  
11 for him, but it sure helped establish knowledge of receipt,  
12 that he knowingly was receiving these?

13 A. I don't recall those exact words, but I do recall a  
14 similar conversation. I do recall a conversation, but as far  
15 as no evidence of distribution on the computer, that is true.

16 Q. It's true what we are talking about distribution meaning  
17 that he sent files out, that he posted files somewhere that  
18 were left for anybody to come look?

19 A. That is correct, yes.

20 Q. And you are not telling me that, you know, and I didn't  
21 take it to mean that files weren't being grabbed as they were  
22 being downloaded?

23 A. Correct.

24 Q. Okay.

25 MR. GABRY: Thank you, your Honor.



1 THE COURT: Thank you, counsel.

2 Ms. Hessmiller.

3 MS. HESSMILLER: Nothing further, your Honor.

4 THE COURT: All right. Agent, you may step down,  
5 sir, with the Court's thanks.

6 THE WITNESS: Thank you.

7 (At 10:15 a.m., witness excused.)

8 THE COURT: Any further proofs, Miss Hessmiller?

9 MS. HESSMILLER: No, your Honor. Thank you.

10 THE COURT: Mr. Gabry, in light of the government's  
11 evidence, do you wish to present any proofs?

12 MR. GABRY: No, your Honor.

13 THE COURT: All right. Thank you.

14 Miss Hessmiller, I'll take your argument on the two  
15 issues, distribution and acceptance.

16 MS. HESSMILLER: Distribution and the acceptance,  
17 your Honor?

18 THE COURT: Yes, please. Thank you.

19 MS. HESSMILLER: I'll start with the distribution,  
20 your Honor. I hope that Special Agent Kruithoff's testimony  
21 helped to clarify, and it sounds from the questions from both  
22 sides that it did. That the agent was able to download from  
23 Mr. Abbring files that Mr. Abbring was currently downloading  
24 that were residing in his shared Ares folder before he pulled  
25 them out and put them on an external hard drive. The water

1 analogy is a very good one. Another analogy, one I thought of  
2 was that this is something akin to a poker table. That when  
3 you join the Ares group, you're sitting down at a poker table,  
4 you have to buy in. The way you buy in is anything that you  
5 receive is on the table for others to take while you're  
6 receiving it.

7       There is no block function in Ares, so there are  
8 other programs out there where a user can download in relative  
9 privacy by blocking others from downloading from them. Ares is  
10 not that type of program, so an occupational hazard of using  
11 Ares is that whatever you're in the process of downloading is  
12 available to others, and that is the buy in for Ares.

13       Distribution for the two point enhancement does not  
14 require intent. There is a lot of caselaw on the five point  
15 enhancement of whether a person is distributing with the  
16 expectation of receiving something in return that's valuable.  
17 For distribution, the mere posting of something to make it  
18 available to others is sufficient without intent.

19       Here the way the Ares works and the way Mr. Abbring  
20 was using it was that he was making files available, partial  
21 download is somewhat of a misnomer as we learned from Special  
22 Agent Kruithoff. He was receiving child pornography that he  
23 could play on his computer involving graphic depictions of  
24 children involved in sexual conduct. So this was not--

25       THE COURT: Would you agree with me that this, based

1 on facts that I've heard, not only from the agent's testimony  
2 but also from the nature of the statements in the presentence  
3 report, that the factual pattern here is somewhat unique. I  
4 don't think I have personally as a federal judge have had a  
5 case with this particular fact pattern. Would you agree with  
6 me on that?

7 MS. HESSMILLER: I haven't seen one exactly like  
8 this, your Honor.

9 THE COURT: I mean typically, the situation is the  
10 files are downloaded and they are sitting.

11 MS. HESSMILLER: Sitting there.

12 THE COURT: They are sitting there. And they are  
13 because of the nature of the program they are there to be  
14 shared with other people in the Ares network.

15 MS. HESSMILLER: Correct.

16 THE COURT: In this situation, if I appreciate the  
17 agent's testimony, and I guess it's your argument, that the two  
18 level distribution occurred while the files were being  
19 downloaded.

20 MS. HESSMILLER: Correct. But it did occur some four  
21 or five times over the course of an entire year by one  
22 undercover agent. The undercover agent had the accessibility  
23 to Mr. Abbring's file that anybody on Ares would have had  
24 during any of those times. So although Mr. Abbring was making  
25 efforts to remove them from the shared file, he was not

1 removing them from the shared file soon enough such that  
2 Special Agent Kruithoff couldn't get to them, possibly other  
3 people as well using Ares may have also gotten them.

4 The presentence report indicates in Paragraph 27 that  
5 6,500 files had passed through Mr. Abbring's Ares shared folder  
6 at some point. Meaning that those were likely files that he  
7 had downloaded from Ares, they resided in his shared folder for  
8 at least a brief period of time, and any and all of those files  
9 would have been available to others even while he was in the  
10 process of downloading them.

11 I would suggest here, your Honor, that factually and  
12 legally the two point enhancement does apply, but that I would  
13 also agree that Mr. Abbring is not the most serious distributor  
14 of child pornography, that he was making efforts to not make it  
15 available to other people, perhaps unsuccessfully, but that may  
16 be a consideration for your Honor in determining the degree to  
17 which to range within the guideline sentence or below.

18 As for the acceptance issue, your Honor, Trooper Sowa  
19 was present for the interview. He conducted the interview, and  
20 he wrote the interview report. He was the first person to talk  
21 to Mr. Abbring about this. He was the first law enforcement  
22 officer to ever bring this topic up to Mr. Abbring. It was  
23 during the execution of a search warrant, it was likely a  
24 surprising emotional event to Mr. Abbring as indicated by later  
25 portions of his report where Mr. Abbring became quite

1 emotional. This was prior to Mr. Abbring having a chance to  
2 think about what he should say. This was prior to him going to  
3 therapists that he would hope to quote at sentencing. This was  
4 prior to him getting a defense attorney. This was prior to him  
5 talking to the presentence investigator. Trooper Sowa had the  
6 first interaction with Mr. Abbring. As is Trooper Sowa's  
7 practice, the conversation focused on child pornography.  
8 Trooper Sowa was not there to investigate adult pornography,  
9 and the focus of the conversation was child pornography.

10 Mr. Abbring said that he would search for  
11 approximately six years for girls around 12 to 14 years old, he  
12 said that he went a year without looking at these things, but  
13 he went back because access to the movies was just too easy.

14 During the context of that conversation, Mr. Abbring  
15 said that he masturbated to these images at least-- a couple of  
16 times. And it sounds like he is going back. It sounds from  
17 the sentencing memorandum, the objection memorandum, and the  
18 argument here, that he didn't know what they were talking  
19 about, that he just brought up masturbating to some other thing  
20 besides child pornography. That's not believable, and is not  
21 the testimony of Trooper Sowa. That is an attempt by Mr.  
22 Abbring to say that he did not get sexual gratification from  
23 these images. That he was searching for images, as he says in  
24 his sentencing objection memorandum, because he himself had  
25 been a victim as a young boy, and that he was somehow looking

1 for a community of other children who had undergone a similar  
2 experience.

3 The images and video that Mr. Abbring was downloading  
4 were graphic, predominately girl victims of child pornography.  
5 There's descriptions in the presentence report describing  
6 graphic sex acts, oral sex, masturbation of young girls on  
7 adult males. There were also images of bondage and  
8 sadomasochistic conduct of young girls. His explanation that  
9 he was looking for some sort of community to relate to is  
10 incredulous, it's offensive, it's not believable. So it sounds  
11 as though he is continuing to persist in his argument that he  
12 was not receiving sexual gratification from downloading child  
13 pornography for some six years from-- He didn't delete it from  
14 his computer, he removed it and hid it and kept it on the  
15 external devices. Him persisting the argument of saying that  
16 he doesn't know why he was doing that, but it wasn't for sexual  
17 gratification, it's clearly denial of relevant conduct. And  
18 the government asks the Court to consider that in deciding  
19 whether or not to offer the two point adjustment for  
20 acceptance. Thank you, your Honor.

21 THE COURT: All right. Thank you.

22 THE COURT: Mr. Gabry, I'll give you the last word on  
23 those issues if you want to take it, sir.

24 MR. GABRY: Just briefly, your Honor.

25 First of all, in the opening, I guess statement, from

1 Miss Hessmiller, she mentioned Mr. Kruithoff found 6,500 files  
2 or a thousand files, whatever number, there is no indication  
3 whatsoever that those files were child pornography. And to  
4 presume that or to suspect that or anything just doesn't appear  
5 to be appropriate.

6 As Agent Kruithoff said, Ares is used worldwide for  
7 all sorts of things, including finding regular legal movies,  
8 which is what Mr. Abbring, as one sees in the PSR, indicated  
9 was how he first got exposed to finding how easy it would be to  
10 find it. He was using it for a number of things, but none of  
11 that is recollection of the officers.

12 I'm not sure how to react to the comments well,  
13 before he got a defense attorney, before he got a therapist.  
14 If anybody comes in front of this Court at some point in time  
15 that can specifically indicate that they got down a hundred  
16 percent why they do what they do in this particular area of the  
17 law I would like to see it. I'm sure they have, in a number of  
18 cases I've done, a wide range of explanations on how they got  
19 into this.

20 So what do we do when we are trying to help an  
21 individual deal with what he is going to be facing, and more  
22 importantly deal with the problem that he has involved in that,  
23 but we send them to qualified therapists. In this situation,  
24 we sent him to somebody that I've used before and there is a  
25 detailed report in there. The government, as I would

1 anticipate in bringing these types of cases always feels, it's  
2 incredulous, he wouldn't do this, it wouldn't be for the  
3 security blanket. A quote from the commission's report in  
4 February, 2013. "The commission reported that some offenders  
5 have non-sexual motivations from viewing child pornography,  
6 including avoidance of stress or dissatisfaction with life. It  
7 reported that recent studies showed that appropriate treatment  
8 interventions are associated with a low rate of recidivism. It  
9 is real. Not everybody who looks at this stuff is a dangerous  
10 child molesting predator or going to become one. And  
11 unfortunately, your Honor, and later on we will talk about the  
12 guidelines, it seems like because of a starting off point  
13 that's where we have got. Mr. Abbring, but for the volume of  
14 what was found on that hard drive, would appear to be what we  
15 would call a simple receipt guy, he is going out looking for  
16 it. The vehicle nowadays is the peer-to-peer, but it's still  
17 just searching and getting it. He is not in the chat rooms, he  
18 is not using it for any kind of sexual gratification. The  
19 testimony is that in this discussion, he mentioned twice, that  
20 is the extent of it. He's indicated that he didn't, that he  
21 felt that it was through adult pornography. The assessments  
22 that bear out that he is being honest or at least he has all  
23 the indicators of being honest would also indicate that. And I  
24 don't want to go off into this legal argument, but is somebody  
25 who views this stuff, and we see relevant conduct, I guess I



1 just, if we don't even score levels for masturbation versus  
2 simple just possession or cataloging. What was said that in  
3 thing was said in that room. I don't believe that he is lying  
4 to anybody. Is there some denial that's something that we can  
5 ultimately find out, is he intentionally lying? Your Honor, he  
6 stepped up to the plate, has told the Court what he has done.  
7 He is willing to accept the punishment of this Court. I don't  
8 know what more he can do to accept responsibility than realize  
9 he is turned his back on his life, given the circumstances he  
10 has been through, that's a huge step forward for this man.

11 THE COURT: All right. Thank you.

12 There are two objections before the Court. First is  
13 the application of the distribution sentencing guideline  
14 enhancement, which is Sentencing Guideline Provision  
15 2G2.2(b)(3)(F). Based on the Sixth Circuit law, which the  
16 court is aware of, the Court is going to overrule the  
17 defendant's objection and apply the two level enhancement for  
18 this particular case under these particular circumstances. I  
19 do that based on the testimony that the Court heard this  
20 morning, as well as the descriptions of the defendant's conduct  
21 contained in the presentence investigation report.

22 The Sixth Circuit law on this issue is fairly clear.  
23 United States vs. Connor, at 521 Federal Appendix 493, a 2013  
24 Sixth Circuit case. I recognize that case is unpunished, but  
25 the Court finds it persuasive, as well as Ramos at 695 F.3d

1 1035 at Page 1041. "The knowing use of a sharing program that  
2 allows access to child pornography files is sufficient to  
3 warrant the two point increase." That is the Bolton case at  
4 669 F.3d 780 at Page 783, as well as Connor, previously cited,  
5 and Gerick, G-e-r-i-c-k, an unpublished case from the Sixth  
6 Circuit, decided June 11, 2014.

7       The Court is aware of the series of Eighth Circuit  
8 cases that the defendant has brought to my attention,  
9 specifically Dodd and Durham, but there is no indication from  
10 the Court's review of the caselaw that the Sixth Circuit has  
11 adopted those approaches to the evaluation whether the  
12 distribution enhancement ought to be applied. So accordingly,  
13 the Court, based on the Sixth Circuit law that the Court is  
14 required to apply to the legal decision of applying the  
15 enhancement, the Court overrules the defendant's objection and  
16 the two level enhancement will be applied. This is clearly not  
17 a five level enhancement, of course, most of the caselaw  
18 involving the application of the distribution enhancement  
19 involve the application of the five level enhancement, but I do  
20 believe two points is appropriate under the facts and  
21 circumstances of the proofs before the Court this morning, as  
22 well as the presentence report.

23       As far as acceptance of responsibility is concerned,  
24 this is a close issue, because there are disturbing elements of  
25 denial of relevant conduct based on this record. But I intend

1 to give the defendant the benefit of the doubt on this  
2 particular issue. I will apply acceptance of responsibility.  
3 The government has made the motion for the third level, which  
4 will be granted, that makes the Offense Level 34, Criminal  
5 History Category I. So I'm sustaining the defendant's  
6 objection to the non-application of acceptance of  
7 responsibility. As I say, this is close, and as I also  
8 indicated moments ago, there is disturbing aspects of denial of  
9 relevant conduct, but under the circumstances, in its totality,  
10 I'm going to apply acceptance.

11 Accordingly, the Offense Level is 31, Criminal  
12 History Category is I. The advisory guideline range is 151 to  
13 188 months.

14 The defendant has filed a motion for a variance,  
15 which I'm sure Mr. Gabry will address momentarily. That is ECF  
16 Document 18. The Court has also had the benefit of Mr. Gabry's  
17 sentencing memorandum as well as numerous attachments, plural,  
18 to the sentencing memorandum having to do with letters from  
19 individuals who clearly support Mr. Abbring as he stands before  
20 the Court today.

21 So with that preface, Ms. Hessmiller, allocution on  
22 behalf of the government.

23 MS. HESSMILLER: Thank you, your Honor.

24 Your Honor, in this allocution I think it's most  
25 appropriate to focus on the victims. The defendant, as we

1 stated before, was downloading images for six years. The  
2 images in the charged in the Information have terms like PTHC,  
3 which is pre-teen hard core. PTHC five year baby come inside.  
4 New PTHC private picks 13 year old daughter. Horny toads best  
5 CP-PTHC. These images and videos were all submitted to the  
6 National Center For Missing and Exploited Children, which  
7 returned a report approximately 113 pages long identifying,  
8 give or take 64 known child pornography victims in those images  
9 and videos. So at least 64 different children have to live  
10 every day knowing that people are out there downloading and  
11 viewing images and videos of their worst moment.

12 One of the victims-- several of the victims who were  
13 identified in Mr. Abbring's collection of child pornography  
14 submitted victim impact statements. One of the victims wrote,  
15 "I'm afraid that someone from the police will call and tell me  
16 that they found more things or pictures on other people's  
17 computers or in other cases that come up. Every time someone  
18 else sees pictures or videos of me, it feels like they are the  
19 ones who hurt me to begin with, like they are the ones who did  
20 this stuff to me. Like they are my father, and they just want  
21 to use me. Like I'm just here for other people's pleasure. If  
22 you're looking at pictures or videos of me or any child, then  
23 you're hurting everyone you look at. You are the one abusing  
24 us. You are the one keeping my pain going for the rest of my  
25 life."

1           And a second victim-- the second and final victim I  
2 would like to quote from, your Honor, says, "My world came  
3 crashing down the day I learned that pictures of me sexually  
4 abused had been circulated on the internet. Since then little  
5 has changed except my understanding that the distribution of  
6 these pictures grows bigger and bigger by the day, and there's  
7 nothing I can do about it. That enormity of this has added to  
8 my grief and pain and given me a paranoia. I wonder if the men  
9 I pass in the grocery store have seen them. I feel totally out  
10 of control. They are trading around my trauma like treats at a  
11 party and it feels like I'm being raped all over again by every  
12 one of them. So many nights I've cried myself to sleep  
13 thinking of a stranger somewhere staring that their computer  
14 with images of a naked me on the screen. I can never feel safe  
15 so long as my images are out there. Every time they are  
16 downloaded I'm exploited again, my privacy is breached, and I  
17 feel in danger again."

18           So by Mr. Abbring committing these crimes of  
19 receiving these images of these victims, whose actual words  
20 have just been quoted, Mr. Abbring is contributing to 64-plus  
21 victims out there in the world walking around wondering if  
22 every person they see has seen an image of them performing oral  
23 sex on their father, being raped by somebody, sitting in the  
24 back seat of a car masturbating a naked male. These are all  
25 images and videos that were found in Mr. Abbring's collection.

1       There was some contention earlier that the government  
2 is at fault for not just charging possession. Well, the  
3 government doesn't charge possession if the defendant committed  
4 receipt. Mr. Abbring is the one who committed receipt, not the  
5 government.

6       It's not the government's fault that Mr. Abbring is  
7 sitting here today. It's not Congress's fault that he is  
8 facing this sentence. It's Mr. Abbring's fault for whatever  
9 reason in his childhood for deciding to re-victimize additional  
10 children beyond the horrible sexual abuse that they already  
11 went through, by continuing to proliferate and receive and  
12 search for images of their abuse of these horrible terms and  
13 really disturbing content.

14       So your Honor has all of the information available in  
15 terms of making a decision on the motion for variance or the  
16 within guideline sentence. But I do think it's important to  
17 keep in our memory the words of the victims in Mr. Abbring's  
18 collection.

19       Thank you, your Honor.

20       THE COURT: Thank you, counsel.

21       Mr. Gabry.

22       MR. GABRY: Thank you, your Honor. Counsel.

23       First of all, your Honor, let me say, you know, there  
24 is a commonality to I guess our backgrounds. In no way have I  
25 ever, nor will I ever, nor do I ever convey to a client that

1 the punishments associated with this crime because of this  
2 behavior are not appropriately set forward. There is no  
3 question here who is at fault. There is a process to try to  
4 resolve a case in the interests of a client that I have a duty  
5 to do, and that's done, but that doesn't minimize or immunize  
6 myself or my client from the plight of these young ladies.  
7 There is something wrong with Mr. Abbring in that he would  
8 spend the time to search out these images. What could be  
9 wrong? That is, I believe, one of my responsibilities to see  
10 what are we dealing with, and we have done that, I think, in  
11 this case. And I know the Court has sentenced hundreds of  
12 individual, I've handled a number of cases, and there is a  
13 commonality too that we hear, oh, I was abused as a child, and  
14 that's brought up. In no case that have I dealt with, either  
15 as a prosecutor or as a defense attorney, have I seen such  
16 firsthand effects on one of my clients of being a victim. This  
17 man understands what it is to be sexually assaulted. Not only  
18 that, but he understands this fear and this going forward that  
19 occurs because-- because of his silence other children were  
20 hurt.

21 The attachments that I attached to the sentencing  
22 memorandum are done just to inform the Court that this is not  
23 the old well, you know, my uncle did it once and nothing. This  
24 was a predator that this child ran into, and to the extent that  
25 there was damage done, it wasn't addressed, it was self

1 medicated to an extent, by way of the emotional, I would say  
2 lack of evolution of Brad Abbring, the demeanor, the way he  
3 expresses himself, the calm concrete kind of attitude, but he  
4 knows he did wrong. He knows that these are real human  
5 beings. He understands that by him looking at those pictures,  
6 and we had this conversation in my office not long ago, "You  
7 could have been in the room, Brad, while it was happening.  
8 That's what viewing it does. If you were actually in the room  
9 and you were watching this child get assaulted, would you not  
10 stop it? Would you not stop the man from doing that? Well, by  
11 viewing these images, that's what you're doing." He  
12 understands that. He wants to know why, and we did too. And  
13 what we discovered, what we uncovered is that there was an  
14 impact done. He does see the distinction between being the  
15 person who created the initial harm, the attacker, and then the  
16 difference between that person and the viewers. And that  
17 doesn't minimize anything, and it's almost kind of a common  
18 sense approach that but for you doing this, there wouldn't be  
19 any images. So who is more at fault? Okay. That doesn't mean  
20 he is not at fault by entering into this world instead of  
21 getting help in a different fashion.

22 I've put together a sentencing memorandum that I hope  
23 the Court sees some evolution as I've seen in some of these  
24 cases. I noted with interest the, forgive me if I misspeak it,  
25 in Bristline case, that talked about what kind of



1 considerations the Court needs to look at as far as varying  
2 from the guidelines. These are Congress's laws, I understand  
3 that. This five year mandatory minimum is Congress's law.  
4 Where I suggest the Court can vary from and deviate from is how  
5 the guideline was then created as far as the evolution to catch  
6 up to that five year. No difficulty whatsoever when we did it  
7 were crack cocaine back in the '90s and said one year,  
8 mandatory one year; gun law, mandatory two years; it's a  
9 mandatory five years. Where we got into this huge escalation  
10 was a combination of factors of the change in technology, the  
11 simplicity by which this stuff is landing in so many people's  
12 files, and the fact that-- I'm sorry, the fact that the  
13 commission in trying to fit the five year mandatory minimum in,  
14 instead of just saying that this is going to cost you five  
15 years, we are now going to adjust guidelines, and we are going  
16 to add levels, and we are going to try to bring things up.

17 What I tried to present to the Court in my motion for  
18 variance for factors for the Court to consider in looking at  
19 the guidelines as we have discussed one area distribution, the  
20 guidelines give a flat increase in levels for what could be a  
21 person who leaves a file open with 450 videos and 1,000 images  
22 sitting there for anybody to get and treats that person the  
23 same as a person who is in the process of downloading files and  
24 somebody else is glomming on as they are coming down. Why do  
25 we do that? Well, my understanding is we escalate these

1 files-- or these levels in order to keep pace with, if we are  
2 going to have a five year minimum, in order to get to the 60  
3 months, we have to start at these base levels.

4       Once upon a time, as the sentencing commission report  
5 indicates, and these are judges that are reacting to this, and  
6 I understand the Court's position about this law, I truly do.  
7 I also know, and I think the Court would agree that there is a  
8 wide variance of opinion. One thing that struck me was that I  
9 cited in my memorandum is that remarks attributed to  
10 Mr. Abbring were actually remarks attributed to an Oklahoma  
11 district judge that talked about issues of possession and  
12 simple receipt.

13       Mr. Abbring was charged with receipt, knowing  
14 receipt. The sentencing commission in its recommendations  
15 basically indicates that they feel that knowing receipt is not  
16 much different than simple possession, and that maybe they both  
17 should have a lesser mandatory minimum, but that the mandatory  
18 minimum of five is too harsh in some individual's opinions. So  
19 what. That doesn't matter. We are dealing with five. My  
20 question and my sentencing memorandum is, your Honor, what  
21 number beyond five is sufficient, but not greater than  
22 necessary to meet the sentencing factors of 3553. And I hope  
23 the Court in seeing that I tried to break them down in such a  
24 way that we had a better picture of who Mr. Abbring was, not  
25 just what we were able to get from the PSR interview. Yes,

1 they are people that know him. Yes, they people that love him,  
2 but they also know him, and they have talked about not  
3 necessarily he didn't do it, you know, he is not that kind of  
4 guy, but yes, they know he did it. They have their own ideas  
5 why it might be this bad, but I wanted the Court to learn from  
6 that the characteristics, the qualities of Mr. Abbring, to give  
7 the Court a better view of who he is as a person. That there  
8 is a decent bone that runs his spine, that helps people, that  
9 tries to do the right thing. But something got disjointed and  
10 he began to go into this world, and why? I think Randy Flood  
11 gives us a pretty good indication as to why.

12       So when we look at those sentencing factors, first of  
13 all, is he a danger to the public? Is he a danger to all of  
14 these children that have submitted those statements? Well, he  
15 certainly will be if he ever goes back to looking at these  
16 images, which I think would be highly unlikely. But he's  
17 certainly not a danger to the public in any other fashion.  
18 What is incarceration going to mean to this man who's never  
19 been locked up a day in his life? Thirty days is going to be  
20 like 60. Use of progression, so at least let's weigh that as  
21 we are trying to determine what kind of punishment is  
22 necessary.

23       And that leaves us with one that, of course, we have  
24 to address, and that is what do we say to the public? How do  
25 we treat these individuals? Are we going to be able to deter

1 the public by handing down huge sentences, by taking him out of  
2 his life basically without treatment for the large portion of  
3 the sentence that the Court imposes, only to have him return to  
4 the community at some point in time. Is that going to deter  
5 people? I have my opinion, and the Court certainly has  
6 theirs. My experience, not many people really think about this  
7 when they start looking.

8 Yes, he needs to be punished. He understands he  
9 needs to be punished. He has agonized over how to address this  
10 to the Court. I'm just asking the Court to depart downward  
11 from the guidelines as found, to put the sentence more in the  
12 area of six, seven, eight years than into double digits. The  
13 basis of that again is largely based on what I set forth not so  
14 much attacking the guidelines, I'm not-- I'm moving away from  
15 the idea of protect and the destabilization or the  
16 deconstruction, I guess Mr. Stabenow called it of the  
17 guidelines, but looking at the sentencing commission's own  
18 reports that say there are some things here we need to fix.  
19 Our guidelines aren't really helping our judges tell us who is  
20 really dangerous, who really needs to be put away.

21 The percentages that I've attached in Exhibit 5 show  
22 how over time they continue to escalate so that everybody,  
23 pretty much everybody that the Court is going to see, because  
24 the prosecutor determines, you know, they don't-- I have not  
25 seen too many people that have been prosecuted for two images

1 or five images. Everybody the Court is going to see is going  
2 to be doing double, triple, or maxing out for basically  
3 receiving child pornography, not being in chat rooms, not  
4 soliciting children. Where would there be a ceiling? If  
5 Mr. Abbring did any of that, he should be hit harder, but under  
6 these guidelines, you couldn't. You could go a few months. So  
7 I think that is one of the policy concerns in the guidelines as  
8 I see them, and as I believe other judges and the sentencing  
9 commission sees them.

10       There is an interesting comment in the summaries that  
11 deals with the idea as I already mentioned about knowing  
12 receipt versus possession. It would be my contention that we  
13 have a case here of knowing receipt, yes, a lot of files. We  
14 don't downplay that. Yes, he has every right to be here, the  
15 prosecutor has every right to decide given all of this. He  
16 needs to be addressed by this Court. However, your Honor, the  
17 guidelines in this case seem onerous without achieving any of  
18 the responsibilities of the sentencing factors, and I would ask  
19 the Court to depart downward more in the area of seven or eight  
20 years.

21       THE COURT: Thank you, counsel.

22       Mr. Abbring, is there anything you wish to say in  
23 your own behalf, sir? You may proceed as you wish.

24       THE DEFENDANT: Yes, I do, your Honor.

25       THE COURT: You may stand at the podium or remain

1 seated, whatever you like, sir.

2 THE DEFENDANT: Words alone can't express how sorry  
3 and remorseful I am for what I have done.

4 I'm sorry. I'm extremely guilt ridden because of the  
5 damage I've cause by downloading images. Because I downloaded  
6 images, I have re-victimized them. I have caused pain and  
7 suffering. Knowing their images are being downloaded makes  
8 them relive their abuse. The impact on the children in the  
9 files is an emotional scab, never healing because their images  
10 or videos keep being downloaded tearing the scabs off and  
11 causing them to relive the abuse again and again. They are  
12 unable to escape their images and emotional devastation it  
13 causes them. The victims live day-to-day knowing anyone they  
14 see may have viewed their abuse. I feel terrible that I have  
15 been a stumbling block in their recovery. It has been wrong of  
16 me to ever download the files. I'm sorry.

17 Re-victimizing the kids in the images was the wrong  
18 way to cover up what happened to me in my childhood. I could  
19 relate and empathize to their abuse. It made my own abuse feel  
20 insignificant. For 25 years I carried my abuse and never told  
21 a sole. I wanted to hide my molestation from the world. I  
22 thought people would judge me and treat me like another  
23 statistic. I felt that if I came out with the abuse after the  
24 other two boys were abused by Robert Gleason, they would be  
25 angry at me, angry for not coming forward and preventing them

1 from the same devastation that I endured. All of these years  
2 I've carried the feelings of worthlessness, guilt, shame, and  
3 remorse. It caused me to be distant and an unemotional shell  
4 of a man. I've had a hard time trying to show my emotions over  
5 the years. I've tried so hard for so long to hide what  
6 happened to me and the suffering I felt that when I do  
7 generally feel emotions, they don't show. Society has a stigma  
8 that a man should be strong, tough, and not cry, but we forget  
9 that we are all human and all hurt in some way.

10 I have been seeking long overdue help at what has  
11 happened to me 25 years ago in Boy Scouts and what I have done.

12 I take full responsibility for my actions and the  
13 consequences of them. In group I have learned that I'm not  
14 alone, and talking about my feelings is healthy. It helps me  
15 recover and become a stronger person. It wasn't my fault what  
16 happened to me, and it wasn't my fault what happened to the  
17 other boys. I thought they would be angry at me for not coming  
18 forward, but if it was reversed, I know I wouldn't blame them,  
19 they didn't molest me in a mess hall at Camp Gerber, Robert  
20 Gleason did. Still it is unacceptable, my choices I made to  
21 cover my own pain. It was selfish and wrong.

22 My heart aches for all of the children that have  
23 suffered by other's and my actions. I have prayed that the  
24 victims of my actions can forgive me for what I have done. I  
25 have asked God for forgiveness for my sins every night and will

1 continue to until the day I die.

2       It was not right of me to use their abuse to cover up  
3 my own abuse. In counseling I have found my triggers and  
4 identified the emotions they cause. Instead of covering up my  
5 emotions, I talk about them now. People that I have had  
6 surface relationships with now know the real me, supporting my  
7 family and I. With the help of my therapist, he has helped me  
8 with anxiety and emotions caused by my triggers. He has used  
9 an eye movement desensitization and reprocessing, DMDR, as a  
10 form of treatment that reduces emotional and physical symptoms  
11 resulting from the disturbing or unresolved life experiences.  
12 Now an item like a Boy Scout knife is just another knife. I  
13 don't have anxiety or a flood of emotions about my molestation  
14 as I did before when I see it. I'm deeply thankful for all of  
15 the help. I know with therapy, group meetings, family, church,  
16 and friends supporting me, I will never feel worthless again.  
17 Proverbs 24.6, "For waging war, you need guidance, and in  
18 victory many advisors."

19       I have put myself in the shoes of the children abused  
20 in the images I downloaded. I understand their pain. I never  
21 wanted to hurt anyone. I'm so sorry that I re-victimized them  
22 by downloading images. It makes me upset what I did. I tried  
23 to justify what I was doing, but I was wrong. I know that I  
24 will never do it again. It's painful to talk about what  
25 happened to me, so I know-- I know it's painful if there was a



1 reminder of abuse floating around in cyberspace to relive over  
2 and over again. I just wish there was some way I could tell  
3 the victims the images I downloaded I'm sorry.

4       The impact of my actions is greater than I ever  
5 imagined. My own pain had put blinders on my perception of  
6 what I doing. Not only have I re-victimized all the kids in  
7 the images, I have also created collateral victims. My wife  
8 will struggle to keep up the house. She will struggle with the  
9 bills that have me around it was really hard on her. My  
10 daughter will have a hard time. I haven't been there to help  
11 her, to support her, and family activities. My parents will  
12 also have a hard time not having their son to talk to and help  
13 out when they need me. My employer will be affected by my  
14 actions. I was a lead installer, problem solver, and go-to  
15 guy. All my family and friends will be affected and won't have  
16 their weekend companion or someone they can count on.

17       The children are the main victims of what I've done.  
18 My family and friends are collateral damage caused by my  
19 actions.

20       I'm sorry for all the hurt, pain, and suffering I've  
21 caused by my actions, I know I can't change the past, but I can  
22 accept the responsibility for what I've done. I want to heal  
23 from what I've experienced and grow stronger for my family,  
24 friends, and society. I am a living testimony for speaking  
25 out. I want to help and I want to get help.

1           Job 17.9. "Nevertheless the righteous will hold  
2 their ways and those with clean hands will be stronger."

3           I would also like to apologize for my misplaced anger  
4 in the letter to Senator Meekhof. I had an overwhelming sense  
5 of devastation. I never intended to come across with such  
6 anxt. I misunderstood terms I used. I'm sorry it was  
7 unintentional. The stress and anxiety I felt because of my  
8 actions and the consequences of them, I was grasping for any  
9 help I could get. I wanted someone to hear me. My intentions  
10 weren't to have the punishment pardoned. I alone am  
11 responsible for what I've done. I'm sorry.

12          I also want to apologize to the prosecutor and the  
13 investigators for making them view the terrible images. It  
14 disgusts me to even think about what I have done, and in the  
15 pain I've caused to the victims I downloaded. Not only was it  
16 devastating to the victims, it was immoral. I pray that with  
17 time everyone I have affected due to my actions will forgive  
18 me. I am deeply saddened for everyone involved with what I  
19 have done.

20          I have had a year reflect on what I've done, and I  
21 wish I would have told someone about my abuse earlier. During  
22 this last year, I have received and continue to receive therapy  
23 and learn about the effects of my actions. Every day I think  
24 about what I did and the damage it has caused. I've grown  
25 spiritually and I have become closer to my family than ever

1 before. With more help and support, I know I'll be a better  
2 man, son, husband, father, employee.

3 Thanks to the Court and all involved for intervening.  
4 It has forced me to face my past and to begin the long  
5 journey of healing. It has felt like I'm finally free of my  
6 emotional prison. Being caught led me to therapy and that's  
7 helping me heal from my abuse. I was hiding in the emotions I  
8 repressed. I was caught in the cycle of pornography. Now with  
9 the help and support I have received, I've been clean and sober  
10 for 353 days to the date. Without intervention by the courts,  
11 I wouldn't have had met the five great therapists that would  
12 help me on my road to recovery. I have support now to grow,  
13 change, and be the man God intended me to be.

14 Thank you, Judge Maloney, for your time and listening  
15 to me this morning. God has a plan for everyone, so I have a  
16 faith in your decision. God bless you.

17 THE COURT: Thank you, sir.

18 It is the Court's duty to impose a sentence  
19 sufficient, but not greater than necessary to comply with the  
20 purposes of sentencing set forth 18 U.S. Code 3553(a). The  
21 Court recognizes the guidelines are advisory to the Court, but  
22 I have taken the guidelines into account as an initial  
23 benchmark or starting point when sentencing in this case.

24 I recognize I must make an individualized assessment  
25 based on the facts presented. The guideline range is one of

1 the array of factors warranting consideration.

2 I also fully recognize by discretion in determining  
3 an appropriate sentence as recognized by the United States  
4 Supreme Court in its decisions in Booker, Kimbrough, Rita,  
5 Gall, Spears, and the recent Sixth Circuit case of  
6 Herrera-Zuniga.

7 Pursuant to *Tapia vs. The United States*, at 131  
8 Supreme Court 2382, the Court recognizes that imprisonment is  
9 not suitable for the purpose of promoting correction and  
10 rehabilitation.

11 I have considered all of the defendant's arguments  
12 in support of the his request for a lower sentence.

13 The 3553 factors are the nature and circumstances of  
14 the offense and the history and characteristics of the  
15 defendant. The sentence must reflect the seriousness of the  
16 offense; promote respect for law; provide just punishment for  
17 the offense; afford adequate deterrence to criminal conduct;  
18 protect the public from further crimes of the defendant;  
19 provide the defendant with needed medical, educational, and/or  
20 correctional treatment; the need to avoid unwarranted  
21 sentencing disparity among similarly situated defendants; any  
22 guideline policy statements that pertain and the kinds of  
23 sentence available to the Court.

24 First, as far as recommendations to the Bureau of  
25 Prisons is concerned, the Court recommends the defendant

1 receive a mental health assessment and treatment and counseling  
2 deemed appropriate by the mental health professionals of the  
3 Bureau of Prisons.

4       The Court has had the benefit of the report that was  
5 attached to the defendant's submissions. I have read that  
6 report, and it's clear that this defendant needs continuing  
7 assistance for his mental health difficulties. I don't  
8 minimize the progress that defendant has made since he was  
9 confronted by law enforcement during the execution of the  
10 search warrant. It's clear to the Court that Mr. Abbring's  
11 treatment and counseling will be of long duration, and  
12 hopefully the professionals of the Bureau of Prisons will be  
13 able to assist him.

14       In addition to that, I recommend that he be housed in  
15 a facility as close to home as possible. This is obviously a  
16 case involving the application of the child pornography  
17 guidelines as outlined in the defendant's submission of the  
18 sentencing memorandum, as well as the request for a variance  
19 from the advisory guideline range. The child pornography  
20 guidelines as promulgated by the sentencing commission are a  
21 matter of very significant debate within the community of the  
22 judiciary, law enforcement, and other commentators on the  
23 federal criminal justice system.

24       Many of the enhancements that we have been talking  
25 about here today are as a result of passage of a statute by the

1 Congress of the United States signed by the President of the  
2 United States, which significantly increased the sentences for  
3 these crimes. These matters, in terms of the passage of a  
4 statute, and in the unusual circumstance of actually writing  
5 into the statute additional enhancements to the child  
6 pornography guideline is a matter within the discretion of the  
7 legislative branch of government and the executive branch of  
8 government.

9 Now, I recognize that these guidelines are advisory  
10 to the Court, and just to make it absolutely clear, I recognize  
11 that Mr. Gabry during the course of his presentation was not  
12 asking me to depart or vary as a result of a policy  
13 disagreement, but to the extent that that might be a part of  
14 the written presentation, I want to indicate for the record, as  
15 I have on many other cases of this nature, that I do not have  
16 any policy disagreements with the child pornography guidelines  
17 as they are presently written.

18 I also recognize that the sentencing commission has  
19 issued a very detailed report on this issue, but I also note  
20 that there are not, since the promulgation of that report,  
21 there have not been significant changes to the guidelines. As  
22 far as I know, the sentencing commission has not promulgated  
23 possible amendments to the guidelines, so this is a matter  
24 which is extant at the moment, but the state of the guidelines  
25 at this point are ones which the Court does not have any policy

1 disagreement.

2       The defendant clearly has very solid family and  
3 community support in the community, undoubtedly he will need to  
4 lean on that support while he is in the institution and, of  
5 course, he will need that support once he is released on  
6 supervised release to the Court.

7       The defendant has a significant work history, no  
8 doubt about that as well. He has been in many aspects a  
9 positive contributor to society. He has expressed remorse for  
10 his crime today in a very eloquent allocution before the  
11 Court. I have no reason to disbelieve his expressions of  
12 remorse as they were presented to the Court today. I do note,  
13 however, that that was-- that is in some contrast to his  
14 initial reactions when he realized that he was going to be  
15 prosecuted federally.

16       But I think the defendant at this point has a much  
17 better understanding of the nature of his crime and the  
18 re-victimization of the youngsters that are depicted in the  
19 video and images which are attendant to this particular case.

20       With treatment and with the defendant taking to heart  
21 that treatment and executing the tools that he will undoubtedly  
22 learn to avoid this circumstance in the future. Assuming all  
23 of those things happen, I do not think the defendant is a  
24 threat to re-offend. So protection of the public from further  
25 crimes of the defendant, in the Court's judgment, at this

1 particular circumstance given the prospects for treatment and  
2 the fact that the defendant seems committed to that treatment,  
3 protection of the public is not a major factor for the Court to  
4 consider here, and does form a basis for some variance from the  
5 guidelines in the Court's judgment as well as the notion of  
6 specific deterrence of Mr. Abbring, which again, I think given  
7 the circumstances that I've just described, and of course at  
8 this point these are hopes of the Court and expectations of the  
9 Court, it's up to Mr. Abbring to execute the treatment program  
10 in the future. But specific deterrence of Mr. Abbring again is  
11 a minimal aspect to the Court's consideration of the 3553  
12 factors.

13       On the other hand, general deterrence of others who  
14 might contemplate similar activity is a major factor for this  
15 Court to consider. I recognize Mr. Gabry's argument to the  
16 contrary that individuals who engage in this activity probably  
17 don't care. They don't think they are going to get caught, and  
18 to a certain extent that might be true. But on the other hand,  
19 the clear firm signal needs to be sent that if you engage in  
20 this sort of activity which involves the re-victimization of  
21 children as young as three and four years old, that you are  
22 going to receive a significant sentence.

23       This crime is serious. The Congress of the United  
24 States has set this crime at a mandatory minimum of five years,  
25 that's a clear indication that the Congress of the United



1 States believes this criminal conduct to be serious, as well as  
2 the executive branch of government. And the issue for the  
3 Court, of course, is finding the appropriate measure of just  
4 punishment which would reflect the seriousness of the offense;  
5 promote respect for law; provide protection of children in the  
6 future which, of course, is one of the major purposes of the  
7 law, and that, of course, is difficult for the Court to  
8 decipher.

9 This is a situation where the defendant has no prior  
10 record. He is a Criminal History Category I. That is the  
11 purpose of Criminal History Category I, is to find a place in  
12 the advisory guidelines for individuals who do not have a prior  
13 record. If he had a prior record, of any sort, his beyond one  
14 point, his advisory guideline range would be even higher than  
15 it is today. But I do intend to grant a variance to the  
16 advisory guidelines in this case, because I believe that under  
17 the constellation of circumstances before the Court, that a  
18 variance of some measure is appropriate, because it would  
19 provide just punishment for the offense and be a sentence  
20 sufficient, but not greater than necessary to comply with the  
21 purposes of sentencing set forth in 3553(a).

22 Accordingly, it's the judgment of the Court the  
23 defendant be committed to the custody of the Bureau of Prisons  
24 to be imprisoned for a term of 132 months.

25 Upon release from imprisonment, the defendant shall

1 be placed on supervised release for a term of eight years.

2 Within 72 hours of release from custody of the Bureau  
3 of Prisons, the defendant shall report in person to the  
4 probation office in the district to which he is released.

5 While on supervised release, the defendant shall  
6 comply with the mandatory and standard conditions of  
7 supervision including sex offender registration, DNA  
8 collection, drug testing is suspended-- I'm sorry, it's a  
9 mandatory condition under the statute, drug testing. There  
10 shall be no firearms, destructive devices, or dangerous  
11 weapons.

12 Additionally, the defendant shall comply with the  
13 following special conditions of supervision:

14 Provide his probation officer with access to any  
15 requested financial information, participate in sex offender  
16 assessment and/or treatment as approved by his probation  
17 officer, which may include physiological testing such as  
18 polygraph, plethysmograph, and/or ABEL assessment. The  
19 defendant will contribute to the cost of the treatment in an  
20 amount approved in advance by his probation officer.

21 The defendant's residence and employment shall be  
22 pre-approved by his probation officer.

23 He shall provide his probation officer with access to  
24 any requested financial information, including but not limited  
25 to, credit reports, credit card bills, bank statements, and

1 telephone bills. The purpose of this condition is to monitor  
2 Mr. Abbring's use of his telephone, his credit card, and other  
3 things to make sure that he is not accessing materials that he  
4 should not be accessing while he is on supervision.

5 He shall not associate with or have any contact with  
6 convicted sex offenders, unless in a therapeutic session, and  
7 with the permission of his probation officer.

8 The defendant shall have no contact with minors under  
9 the age of 18 without the written approval of his probation  
10 officer, and shall refrain from entering into any areas where  
11 children frequently congregate, including, but not limited to  
12 schools, daycare centers, theme parks, theaters, and  
13 playgrounds.

14 The defendant shall not date or socialize with anyone  
15 who has children under the age of 18 without the prior  
16 permission of his probation officer.

17 He shall not possess or publicly display any  
18 materials that may be viewed as lures for children, including,  
19 but not limited to, children's games, toys, videos, or  
20 clothing, without the prior permission of his probation  
21 officer.

22 He shall not possess any materials depicting sexually  
23 explicit conduct as defined in 18 U.S. Code 2256(2)(a)(I)-(v),  
24 including visual, auditory, telephonic, or electronic media,  
25 and/or computer programs or services. He shall not patronize

1 any place whose primary purpose is to promote such materials or  
2 entertainment. The defendant shall not utilize 900 or adult  
3 telephone numbers or other sex-related numbers.

4 The defendant shall advise his probation officer of  
5 all pornographic materials owned or possessed by him, and shall  
6 not own or possess any sexually stimulating or sexually  
7 oriented materials deemed inappropriate by his probation  
8 officer and/or treatment staff.

9 The defendant shall not possess or use a computer or  
10 have access to any on-line service without the prior written  
11 approval of his probation officer. The defendant shall  
12 identify all computer systems, internet-capable devices, and  
13 similar memory and electronic devices to which the defendant  
14 has access, and allow installation of a computer and internet  
15 monitoring program. Monitoring may include random examinations  
16 of computer systems along with internet, electronic, and media  
17 storage devices under the defendant's control. The computer  
18 system or device may be removed for a more thorough  
19 examination, if necessary. The defendant shall contribute to  
20 the cost of such monitoring services, based on the defendant's  
21 ability to pay, as deemed appropriate by his probation  
22 officer.

23 The defendant shall participate in a program of  
24 mental health treatment, as directed by his probation officer,  
25 until such time as the defendant is released from the program

1 by his probation officer, and shall pay at least a portion of  
2 the cost according to his ability to pay, as determined by his  
3 probation officer.

4       The defendant shall use only those computers and  
5 computer-related devices, screen user names, passwords, email  
6 accounts, and internet service providers, as approved by his  
7 probation officer. Computers and computer-related devices  
8 include, but are not limited to, personal computers, personal  
9 data assistants, internet appliances, electronic games, and  
10 cellular telephones, as well as their peripheral equipment,  
11 that can access, or be modified to access, the internet,  
12 electronic bulletin boards, or other computers or similar  
13 devices.

14       The defendant will submit any personal computer owned  
15 or controlled by him to a search conducted by his probation  
16 officer or designee, at a reasonable time and in a reasonable  
17 manner, without prior notice or search warrant, to determine if  
18 the defendant has added, removed, updated, re-installed,  
19 repaired, or otherwise modified the hardware or software on the  
20 computers or hid encrypted files or data inconsistent with the  
21 conditions of supervision.

22       The defendant shall provide all computer-related  
23 billing records, including telephone, cable, internet,  
24 satellite, and the like, as requested by his probation  
25 officer. Refusal to submit to such search is a violation of

1 the conditions of supervision.

2 The defendant will warn anyone with whom he shares  
3 residence that the premises may be subject to searches pursuant  
4 to this condition.

5 The defendant shall comply with the sex offender  
6 registration requirements of the State of Michigan and any  
7 other state in which he may reside while on supervision.

8 Special assessment of \$100 is ordered due and payable  
9 immediately.

10 The Court does not intend to impose a fine in this  
11 case.

12 Pursuant to prior order of the court the government  
13 has indicated it's not seeking restitution, which of course  
14 would be mandatory under the statute, if requested. The  
15 defendant concurs in that position accordingly restitution is  
16 not ordered.

17 Mr. Gabry, any other recommendations to the Bureau of  
18 Prisons that you would like?

19 MR. GABRY: No, your Honor.

20 THE COURT: Any legal objections to the sentence  
21 imposed?

22 MR. GABRY: No, your Honor.

23 THE COURT: Are you satisfied I've addressed the all  
24 of your arguments on the record?

25 MR. GABRY: Yes, you have, your Honor.

1 THE COURT: Thank you.

2 Ms. Hessmiller, any legal objections to the sentence  
3 imposed?

4 MS. HESSMILLER: No, your Honor.

5 THE COURT: Are there counts to be dismissed?

6 MS. HESSMILLER: No, your Honor.

7 THE COURT: Thank you.

8 Mr. Abbring, I advise you, sir, you can appeal your  
9 conviction if you believe that your guilty plea was somehow  
10 unlawful or involuntary, or if there is some other fundamental  
11 defect in the proceeding not waived by your guilty plea.

12 You also have a statutory right to appeal your  
13 sentence under certain circumstances, particularly if you think  
14 the sentence is contrary to law. However, a defendant may  
15 waive these rights as part of a plea agreement, and you have  
16 entered into a plea agreement, which waives some or all of your  
17 rights to appeal the sentence itself. Such waivers are  
18 generally enforceable, but if you believe the waiver is  
19 unenforceable, you can present that argument to the appellate  
20 court.

21 You have the right to apply for leave to appeal in  
22 forma pauperis if you are poor, if you wish to do so, with a  
23 few exceptions, you need to file the appropriate documents  
24 within 14 days of the entry of the judgment in this case. Your  
25 attorney will prepare and file notice of appeal upon your

1 request.

2 Counsel is advised of his obligation to advise his  
3 client of his appellate rights. Should your client wish to  
4 pursue an appeal, the forms for filing an appeal can be found  
5 on this Court's website or the Court of Appeals website.  
6 Should your client choose to appeal, you are obligated to  
7 continue representation of him until such time as you are  
8 specifically relieved by the Court of Appeals.

9 There is one more issue involving remand or self  
10 surrender. This is a mandatory remand case. Miss Hessmiller,  
11 what is your position?

12 MS. HESSMILLER: The government asks that the  
13 defendant be remanded at this time, your Honor.

14 THE COURT: Mr. Gabry?

15 MR. GABRY: We were prepared, your Honor. I don't  
16 believe I have any extraordinary circumstances I need to  
17 address with the Court.

18 THE COURT: Thank you.

19 The defendant will be remanded to the custody of the  
20 marshal.

21 Anything further, Miss Hessmiller?

22 MS. HESSMILLER: No, your Honor.

23 THE COURT: Mr. Gabry?

24 MR. GABRY: No, your Honor.

25 THE COURT: Thank you.



1 Good luck to you, sir.

2 COURT CLERK: All rise, please.

3 Court is adjourned.

4 (At 11:20 a.m., proceedings were concluded.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

REPORTER'S CERTIFICATE

I, Kathleen S. Thomas, Official Court Reporter for  
the United States District Court for the Western District  
of Michigan, appointed pursuant to the provisions of Title  
28, United States Code, Section 753, do hereby certify  
that the foregoing is a true and correct transcript of  
proceedings had in the within-entitled and numbered cause  
on the date hereinbefore set forth; and I do further  
certify that the foregoing transcript has been prepared by  
me or under my direction.

/s/

---

Kathleen S. Thomas, CSR-1300, RPR  
U.S. District Court Reporter  
410 West Michigan  
Kalamazoo, Michigan 49007

KATHLEEN S. THOMAS, U.S. District Court Reporter  
410 West Michigan Avenue, Kalamazoo, Michigan 49007  
(269)385-3050